



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Frederic D. Woocher, Esq.
Strumwasser & Woocher, LLP
10940 Wilshire Blvd, Suite 2000
Los Angeles, CA 90024

MAY 18 2017

RE: MUR 7109
Anthony Portantino
Anthony Portantino for Senate 2016
Anthony Portantino Congressional
Exploratory Committee and David Gould
in his official capacity as treasurer

Dear Mr. Woocher:

On July 27, 2016, the Federal Election Commission notified your clients, Anthony Portantino, Anthony Portantino for Senate 2016, and Anthony Portantino Congressional Exploratory Committee and David Gould in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On May 11, 2017, the Commission found, on the basis of the information in the complaint and information provided by your clients, that there is no reason to believe that Anthony Portantino, Anthony Portantino for Senate 2016, and Anthony Portantino Congressional Exploratory Committee and David Gould in his official capacity as treasurer, violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016), effective September 1, 2016. The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

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Frederic D. Woocher, Esq.
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If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Shonkwiler", with a long horizontal flourish extending to the right.

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

170444-1602-00

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Anthony Portantino

MUR: 7109

Anthony Portantino for Senate 2016

Anthony Portantino Congressional
Exploratory Committee and David Gould
in his official capacity as treasurer

I. INTRODUCTION

The Complaint in this matter alleges that Anthony Portantino, Anthony Portantino for Senate 2016 ("State Committee"), and Anthony Portantino Congressional Exploratory Committee and David Gould in his official capacity as treasurer ("Federal Committee") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and the Commission's implementing regulations when the Federal Committee accepted the repayment of a \$275,000 loan it made to the State Committee 10 months prior. Complainant alleges that the State Committee appears to have commingled the loan proceeds with non-federal funds, and that the repayment violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d).

Respondents provided information demonstrating that the funds used to repay the loan were never commingled with the State Committee's other assets, and argued that the Commission previously issued an Advisory Opinion interpreting the Act and its regulations to permit such a transaction. Based on the available information, the Commission finds no reason to believe that Anthony Portantino, the State Committee, and the Federal Committee violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d).

1 **II. FACTS**

2 In 2010, Anthony Portantino was an incumbent California State Senator, and the State
3 Committee was Portantino's state senate campaign committee. Portantino was also a candidate
4 in the 2012 election for the U.S. House of Representatives seat in California's 26th
5 Congressional District. Portantino filed his Statement of Candidacy on March 26, 2010, which
6 designated the Federal Committee as his principal campaign committee for the House election.¹
7 The Federal Committee has filed quarterly disclosure reports since April 2010, and has never
8 terminated.

9 On June 30, 2015, the Federal Committee transferred \$275,000 to the State Committee
10 and reported the transfer in the Federal Committee's disclosure reports as a "Loan."²
11 Complainant asserts that the State Committee appears to have commingled these funds with its
12 other assets. Respondents, however, assert that the \$275,000 loan was not made in cash, but was
13 a transfer of securities held in an Edward Jones brokerage account in the name of the Federal
14 Committee, and which had been purchased using only federal funds.³ Respondents assert that
15 the securities were never sold or cashed.⁴ Rather, ownership of the securities at the Edward
16 Jones brokerage merely changed from the Federal Committee to the State Committee.⁵

¹ See Anthony Portantino Statement of Candidacy (March 26, 2010). The Federal Committee had filed a Statement of Organization three days earlier, on March 23, 2010. See Anthony Portantino Congressional Exploratory Committee Statement of Organization (March 23, 2010). Notwithstanding the use of the term "exploratory" in the committee's moniker, Portantino filed a Statement of Candidacy only 3 days after registering the Federal Committee as his principal campaign committee; the Committee reported raising over \$5,000 in contributions by June 4, 2010. See Federal Committee July Quarterly Report (July 13, 2010) at Schedule A.

² See Federal Committee July Quarterly Report (July 14, 2015) at 6-8, Schedules B & C. The State Committee also reported the transfer as a loan in its disclosures. Resp. at 1-2 (Sept. 14, 2016).

³ Resp. at 2.

⁴ *Id.*

⁵ *Id.*

1 Respondents contend that the \$275,000 in securities were at all times segregated from the cash
2 funds in the State Committee's bank account, and that the federal and state funds were never
3 commingled.

4 Respondents describe the transfers as "paper transactions" because the State Committee
5 did not use any of the \$275,000 that the Federal Committee loaned it. According to
6 Respondents, Portantino's principal primary opponent in his state election dropped out of the
7 race before any of the funds were used for the state primary election.⁶ On February 4, 2016, the
8 State Committee transferred ownership of the securities back to the Federal Committee, and the
9 Federal Committee reported the receipt as a loan repayment.⁷

10 III. ANALYSIS

11 Federal candidates and officeholders, or entities directly or indirectly established,
12 financed, maintained or controlled by them, are prohibited from soliciting, receiving, directing,
13 transferring, or spending funds that do not comply with the limitations and prohibitions of the
14 Act.⁸ An individual who is a candidate for both a federal and state office must designate separate
15 committees and establish completely separate campaign organizations.⁹ In addition, a
16 Commission regulation provides, in material part, that transfers of funds or assets from a
17 candidate's campaign account for a non-federal election to his or her principal campaign
18 committee for a federal election are prohibited.¹⁰ If a candidate has an account for a non-federal

⁶ *Id.*

⁷ See Federal Committee April Quarterly Report (Apr. 13, 2016) at 8, Schedule C.

⁸ 52 U.S.C. § 30125(e)(1)(A).

⁹ See 11 C.F.R. § 110.3(d). See also Advisory Op. 1994-37 (Schumer) (Jan. 13, 1995).

¹⁰ 11 C.F.R. § 110.3(d); see also Transfer of Funds from State to Federal Campaigns, 58 Fed. Reg. 3474, 3475 (Jan. 8, 1993).

1 election, those funds must be kept separate from federal funds and may not be transferred to his
2 or her federal account or used to pay for expenditures related to his or her federal election
3 activities.¹¹ The provisions at 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d) are designed to
4 prevent the use of funds that are outside the limitations and prohibitions of the Act in federal
5 elections, and to ensure that all funds used in federal elections are reported.

6 In Advisory Opinion 2002-08 (Vitter), the Commission concluded that funds that had
7 been loaned or transferred from a candidate's federal committee to his state committee, and not
8 commingled with the state committee's funds, could be transferred back to the federal committee
9 without violating 11 C.F.R. § 110.3(d).¹² The Commission reasoned that because the funds had
10 been initially raised subject to the Act's requirements and had not been commingled with state
11 committee funds, there was no risk that the funds being repaid would violate the Act's
12 contribution limits and prohibitions.¹³ Accordingly, the Commission concluded that the
13 concerns underlying the regulation prohibiting transfers from state to federal committees are
14 absent, and such funds could be redeposited into the federal committee's account without
15 violating 11 C.F.R. § 110.3(d).¹⁴

¹¹ *Id.* See, e.g., MUR 6267 (Paton) (finding reason to believe a state senator violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d) when he used his state committee funds to pay for polling and other expenditures when he was testing the waters for his federal candidacy); MUR 5426 (Schultz) (finding reason to believe a state senator violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d)) when he directed that funds and assets from his state committee be used to pay for expenses related to his federal election campaign); MUR 5480 (Levetan) (finding reason to believe that a state lawmaker and her state and federal committees violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d) by using funds from the state committee's non-federal account to pay for polling expenditures that directly benefited the federal campaign).

¹² Advisory Op. 2002-08 (Vitter) at 2-3 (Aug. 1, 2002).

¹³ *Id.*

¹⁴ *Id.*; see Transfers of Funds from State to Federal Campaigns, 58 Fed. Reg. at 3474-75. See also, Advisory Op. 1990-29 (Joseph E. Seagram & Sons, Inc.) (Feb. 15, 1991) (explaining that the "decision to allow the transfer of non-Federal election funds to a Federal account in specific situations is premised largely on the legality, under the Act, of the transferred funds"); Advisory Op. 2010-28 (Hoosiers for Hill) (Oct. 27, 2010) (concluding that a state committee may transfer back to a federal committee funds it had been loaned without making a contribution subject

1 The facts in this matter are materially indistinguishable from those presented in
2 AO 2002-08, in that the securities, originally purchased by the Federal Committee using funds
3 subject the Act's limitations, prohibitions and reporting requirements, were loaned to the State
4 Committee, which did not use or convert the securities to cash, or otherwise commingle the
5 assets with other state funds. The State Committee subsequently repaid the loan by transferring
6 the securities back to the Federal Committee on February 4, 2016. Moreover, both transactions
7 were timely disclosed by the Federal Committee to the Commission, as a loan and loan
8 repayment, respectively.¹⁵ Thus, as in AO 2002-08, there appears to be no risk that the assets
9 used for the loan repayment were impermissible under the Act.¹⁶

10 Therefore, the Commission finds no reason to believe that Anthony Portantino, Anthony
11 Portantino for Senate 2016, and Anthony Portantino Congressional Exploratory Committee and
12 David Gould in his official capacity as treasurer violated 52 U.S.C. § 30125(e) and 11 C.F.R.
13 § 110.3(d) by transferring or receiving funds that were not subject to the limitations,
14 prohibitions, and reporting requirements of the Act.

to the amount limitations of the Act, because the funds it had been loaned were never used for their intended purpose and were not commingled with state committee's funds).

¹⁵ See Federal Committee July Quarterly Report at 6-8, Schedules B & C; Federal Committee April Quarterly Report at 8, Schedule C.

¹⁶ See 52 U.S.C. § 30108(c) (providing that persons engaged in activities "indistinguishable in all its material aspects" approved in an advisory opinion "shall not, as a result of any such act, be subject to any sanction provided by this Act").